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EXTRAORDINARY

भाग II—खण्ड 2
PART II—Section 2

प्राधिकार से प्रकाशित
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इस भाग में विभिन्न पृष्ठ संख्या दी जाती है जिससे कि यह अलग संकलन के रूप में रखा जा सके।

Separate paging is given to this Part in order that it may be filed
as a separate compilation.

RAJYA SABHA

The following Bills were introduced in the Rajya Sabha on the 17th August, 1990:

BILL No. VIII of 1990

A Bill to provide for the welfare of children who are born handicapped or mentally retarded and for matters connected therewith

Be it enacted by Parliament in the Forty-first Year of the Republic of India as follows:—

1. (1) This Act may be called the Welfare of Handicapped and Mentally Retarded Children Act, 1990.

Short title,
extent
and
com-
mence-
ment.

(2) It extends to the whole of India.

(3) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint.

Handicapped and mentally retarded born children to be taken care of by the Central Government.

Power to make rules.

2. (1) The Central Government through the Central and State Social Welfare Boards shall take care of and bear all expenses towards the education, training for employment and shelter of all children who are born handicapped or mentally retarded.

(2) The Central Government shall make available adequate funds to the Central Social Welfare Board for implementing the provisions of this Act.

(3) All the State Social Welfare Boards shall function in accordance with the directions of the Central Social Welfare Board.

3. (1) The Central Government may make rules for carrying out the purposes of this Act.

(2) Every rule made under this Act shall be laid before each House of the Parliament.

STATEMENT OF OBJECTS AND REASONS

There are a large number of children in India who are born either handicapped or mentally retarded. The number of such children is increasing day by day due to lack of nutritious food. These children are not properly looked after by the parents and are neglected. Some of the parents even force them for begging. As such, there is an urgent need that all such children are maintained and looked after by the Government. It should be the responsibility of the Government to take care of their proper upbringing, maintenance and employment so that the handicapped children could also feel proud of themselves like other children. The Bill seeks to achieve this objective.

SURESH PACHOURI

FINANCIAL MEMORANDUM

Clause 2 of the Bill provides that all expenses for bringing up such children who are born handicapped or mentally retarded and for their education, etc. will be born by the Central Government by providing adequate funds at the disposal of Central and State Social Welfare Boards. The Bill, therefore, if enacted, is likely to involve recurring expenditure of about Rs. 50 crores from the Consolidated Fund of India.

A non-recurring expenditure of Rs. 10 crores is also likely to be incurred in this connection.

MEMORANDUM REGARDING DELEGATED LEGISLATION

Clause 3 of the Bill empowers the Central Government to make rules for carrying out the purposes of the Bill. As the rules will relate to matters of detail only. The delegation of legislative power is of a normal character.

II

BILL No. XI OF 1990

A Bill to provide for the establishment of an Essential Commodities Procurement and Distribution authority to ensure equitable distribution of essential commodities at a fair price and matters connected therewith.

Be it enacted by Parliament in the Forty-first Year of the Republic of India as follows:—

1. (1) This Act may be called the Essential Commodities Procurement and Distribution Authority Act, 1990.

Short title,
extent
and
com-
mence-
ment.

(2) It extends to the whole of India.

(3) It shall come into force on such date as the Central Government may, by notification in the official Gazette, appoint.

2. In this Act, unless the context otherwise requires:—

Defini-
tions.

(a) "Authority" means the Essential Commodities Procurement and Distribution Authority established under section 3;

(b) "Chairman" means the Chairman of the authority;

(c) "essential commodities" means and includes all foodgrains, pulses, spices, domestic fuel including kerosene oil, edible oils, clothes, books and stationary, soaps and other commonly used toilet articles, lifesaving drugs and similar other articles of daily use that may be notified as such by the Central Government from time to time.

Establishment and constitution of the Authority.

3. (1) With effect from such date as the Central Government may, by notification in the official Gazette specify in the behalf, there shall be established by the Central Government for the purposes of this Act, an Authority to be called the Essential Commodities Procurement and Distribution Authority with its head office at New Delhi.

(2) The Authority shall consist of the following members, namely:—

(a) a Chairman to be appointed by the Central Government;

(b) three members of Parliament of whom two shall be elected by the House of the People and one by the Council of States;

(c) five members to be appointed by the Central Government as it may think expedient from among persons who are in its opinion capable of representing—

(i) the agriculture sector;

(ii) the Government of the States or Union territories;

(iii) the interest of the fair price shop owners;

(iv) the interest of manufacturers of essential commodities; and

(v) such other person who in the opinion of the Central Government ought to be represented on the Authority.

Procurement of Essential Commodities by the Authority.

4. Notwithstanding anything contained in any law for the time being in force, the Authority shall procure all essential commodities that are produced in the country by paying adequate price.

Opening of Fair price shops by the Authority.

5. The Authority, in cooperation with the State Governments, shall open a network of fair price shops throughout the country and at least one such shop shall be opened for every one thousand population or three hundred ration cards.

Fixation of prices of essential commodities.

6. The Authority shall fix the prices of essential commodities which shall be uniform throughout the country and wide publicity through mass media shall be given to such price fixation.

7. The essential commodities procured by the Authority shall be sold through the Fair Price Shops opened by it.

Fair
price
shops
to sell
essential
commo-
dities.

8. The Authority shall supply adequate essential commodities to the fair price shops so that these items are always available to the consumers.

Avail-
ability of
essential
commo-
dities
to be
main-
tained.

9. The Central Government may, after due appropriation made by Parliament by law in this behalf, pay to the Authority by way of grants or loans such sums of money as the Central Government may consider necessary to carry out the purposes of this Act.

Grants
and
loans
by the
Central
Govern-
ment.

10. The Central Government may, by notification in the Official Gazette, make rules for carrying out the purposes of this Act.

Powers to
make
rules.

STATEMENT OF OBJECTS AND REASONS

The present system of fair price shops in the States is not working well and properly to the expectations of a common man to cater to the needs of his daily life. Very often shortages of items have been found in the fair price shops. People have found that large quantities of essential commodities in these fair price shops are rotten, unhygienic and unfit for the human consumption. As a result people are not happy in purchasing such commodities. There is no proper method of distribution and high corruption is prevalent in these fair price shops without proper check. The time bound items are not distributed. There is no proper co-ordination between the Centre and the States in the maintenance of these fair price shops and also in the supply of items. Therefore, it is high time that all the fair price shops in country come under the direct control of the Central Authority which in turn will give a satisfactory supply of items at reasonable prices to the common people at proper time.

Hence this Bill.

SURESH PACHOURI

FINANCIAL MEMORANDUM

Clause 3 of the Bill provides for the establishment of an essential Commodities Procurement and Distribution Authority. Clause 9 provides for the grants to be made to the Authority by the Government. The Bill, if enacted, would involve expenditure from the Consolidated Fund of India.

At the first instance recurring expenditure of about rupees five hundred crores is likely to be incurred.

A non recurring expenditure of about rupees two crores is also likely to be incurred.

MEMORANDUM REGARDING DELEGATED LEGISLATION

Clause 10 of the Bill gives power to the Central Government to make rules for carrying out the purposes of the Bill. The rules will relate to matters of detail only and as such delegation of legislative power is of a normal character.

III

BILL No. XII OF 1990

A Bill to provide for the financial relief to old persons and the needy widows and for matters connected therewith.

BE it enacted by Parliament in the Forty-first Year of the Republic of India as follows:—

1. (1) This Act may be called the Financial Relief to Old Persons and the Widows Act, 1990.

Short title,
extent
and
com-
mence-
ment.

(2) It extends to the whole of India.

Def-
ini-
tions.

(3) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint.

2. In this Act, unless the context otherwise requires:—

(a) “appropriate Government” means the Central Government in respect of the Union Territories and the State Government in respect of the States.

(b) “old person” means any person who has attained the age of sixty years or more.

Financial relief to old persons and the widows.

3. Every old person and every widow having no independent and adequate means of livelihood shall, on an application made in the prescribed form be paid rupees three hundred per month as financial relief by the appropriate Government which shall be subject to alteration on the basis of the prevailing cost index.

Social Welfare Boards to disburse financial relief

4. The Financial relief referred to in section 3 shall be disbursed to every old person and every widow by the appropriate Government through its Social Welfare Board.

Planning of Funds at the disposal of Social Welfare Boards,

5. The appropriate Government shall place adequate funds at the disposal of the Social Welfare Board for granting the benefits under this Act.

Power to make rules.

6. The appropriate Government may make rules for carrying out the purposes of this Act and shall cause them to be laid before Parliament and the State Legislatures, as the case may be.

STATEMENT OF OBJECTS AND REASONS

There are crores of old persons and widows all over the country who are financially crippled. They have no place to live in. The old persons cannot work any more for their livelihood and the widows are also facing the same problem of livelihood. Some widows are having children who are also suffering. It was customary in India for every Indian to look-after their aged parents. But now the economic position has become so difficult that it is not possible for the low income families to support them. This problem is found in villages also. Therefore, it should be the prime concern of the Government to come forward to help the old persons and the widows so as to take them out from the life of distress.

The Bill seeks to achieve this objective.

SURESH PACHOURI

FINANCIAL MEMORANDUM

Clause 3 provides for grant of monthly financial relief of rupees three hundred to old persons and the widows. Clause 5 of the Bill provides that the Central Government shall place adequate funds at the disposal of the Social Welfare Boards for granting financial relief to old persons and the widows. Though the exact number of persons who will be claiming the relief is not known but they will run into crores. It is estimated that a recurring expenditure of rupees five hundred crores is likely to be involved. No non-recurring expenditure is likely to be incurred.

MEMORANDUM REGARDING DELEGATED LEGISLATION

Clause 6 empowers the Central Government to make rules to carry out the purposes of this Act. The delegation of legislative power is in regard to the matters of detail and is therefore of normal character.

IV

BILL NO. XIII OF 1990

A Bill to provide for adequate representation of Scheduled Castes and Scheduled Tribes in posts and services under the Government of India and other Central Government establishments.

Be it enacted by Parliament in the Forty-first Year of the Republic of India as follows:—

1. (1) This Act may be called the Reservation of Vacancies in Posts and Services for Scheduled Castes and Scheduled Tribes Act, 1990.

Short title,
extent
and
com-
mence-
ment.

(2) It shall extend to the whole of India except the State of Jammu and Kashmir.

(3) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint in that behalf.

2. In this Act, unless the context otherwise requires,—

Defini-
tions.

(a) “appointing authority in relation to a service or post in an establishment” means the authority empowered to make appointment to such service or post;

(b) “Central Government establishment” means any office of the Central Government, public sector undertaking or statutory

authority constituted under a Central Act for the time being in force, including a Government Company or a Corporation in which not less than 51 per cent. of the paid up share capital is held by the Central Government, and includes universities and colleges affiliated to universities, primary and secondary schools and other educational institutions which are owned or aided by the Central Government;

(c) "prescribed" means prescribed by rules made under the Act;

(d) "recruitment year" means the financial year during which a recruitment is actually made;

(e) "reservation" means reservation of vacancies in posts and services for Scheduled Castes and Scheduled Tribes;

(f) "Scheduled Castes" means the Scheduled Castes specified in the Constitution (Scheduled Castes) Order, 1950 made under Article 341 of the Constitution of India, as amended from time to time;

(g) "Scheduled Tribes" means the Scheduled Tribes specified in the Constitution (Scheduled Tribes) Order, 1950 made under Article 342 of the Constitution of India, as amended from time to time;

(h) "select list" means the list of candidates arranged in order of precedence according to the rules and orders issued by the Central Government in that behalf and adopted by the competent authority for making appointments in respect of initial recruitment and promotion.

Application of the Act.

3. This Act shall apply to appointments to all the posts and services under the Central Government establishments including those in public sector and; the statutory authorities, including universities and colleges affiliated thereto and other educational institutions owned or aided by Central Government.

Percentage to be reserved.

4. (1) Except as otherwise provided in this Act, the vacancies reserved for the Scheduled Castes and the Scheduled Tribes shall not be filled by candidates not belonging to the Scheduled Castes and Scheduled Tribes.

(2) The reservation of vacancies in posts and services shall be at such percentage of the total number of vacancies as the Central Government may, from time to time, by order published in the Official Gazette determine:

Provided that in the case of initial recruitment, the percentage so determined shall, in no case be less than the percentage which the population of the Scheduled Castes or the Scheduled Tribes, as the case may be, bears to the total population as recorded in the latest census.

Prescription of rosters for vacancies.

5. (1) The Central Government shall prescribe model rosters indicating the number of vacancies to be reserved for the Scheduled Castes and the Scheduled Tribes and the number to be left unreserved.

(2) The appointing authorities shall maintain rosters in the prescribed form.

(3) The rosters shall be consulted for ascertaining the number of reserved vacancies.

6. The reserved vacancies shall be exchanged between the Scheduled Castes and the Scheduled Tribes in the event of non availability of candidates, from the respective categories, but the vacancies reserved for a particular category shall continue to be reserved for that category only for two recruitment years, and if candidates are not available for appointment to a particular reserved vacancy in the third year, the vacancy so filled by exchange shall be treated as reserved for the candidates for that particular category who are actually appointed.

7. If, in any recruitment year, the number of candidates either from the Scheduled Castes or from the Scheduled Tribes is less than the number of vacancies reserved for them even after exchange of reservation between the Scheduled Castes and the Scheduled Tribes, the remaining vacancies may be advertised exclusively for Scheduled Castes and/or Scheduled Tribes to make special recruitment for them. If still the candidates from the Scheduled Castes and the Scheduled Tribes are not available, the reserved posts may be filled by general candidates, after temporarily de-reserving the vacancies in the prescribed manner. The vacancies so de-reserved may, be carried forward to subsequent five years of recruitment as prescribed for particular category of posts.

Exchange of reservation between communities.

De-reservation of vacancies.

8. (1) If, no suitable Scheduled Castes and Scheduled Tribes candidates are available for the posts and services reserved for them, even after following the aforesaid procedure, the concerned Government establishment shall communicate the number of such posts to such Ministry, as may be prescribed under the rules, and it shall be the duty of that Ministry to select the appropriate candidates of the Scheduled Castes or the Scheduled Tribes, as the case may be, and to train them at their own expense at the appropriate institutions.

Special arrangements for imparting technical training.

(2) On satisfactory completion of such training, such candidates shall be appointed to the aforesaid reserved posts.

(3) The services of the general candidates, if any, who might have been appointed, on ad hoc basis, against the reserved vacancies, shall stand terminated, as and when the Scheduled Castes or the Scheduled Tribes candidates, as the case may be, are appointed to the such posts.

9. For initial appointment of the candidates from the Scheduled Castes and the Scheduled Tribes—

(a) the upper age limit prescribed for recruitment shall be increased by five years;

(b) the fees prescribed for admission to any competitive examination or interview for recruitment shall be reduced to one-fourth;

(c) the candidates belonging to the Scheduled Castes and the Scheduled Tribes shall be paid travelling allowance to attend any competitive examination or interview to be held by the Union Public Service Commission, the Staff Selection Commission or by any other recruitment agency, office or body, at such rate as may be prescribed.

Relaxation of age, fee and payment of travelling allowance.

Process
of
selection
and
re-
laxation
of qualifi-
cations.

10. (1) For recruitment through Employment Exchanges in the requisition to be sent to any Exchange, the number of vacancies reserved for the Scheduled Castes and the Scheduled Tribes shall be specified against the total number of vacancies.

(2) For recruitment made through the Union Public Service Commission or any other Selection Board, agency or office, on the basis of any competitive examination or interview, the advertisement shall specify the number of vacancies reserved for the Scheduled Castes and the Scheduled Tribes against the total number of vacancies reserved

(3) In case the number of the Scheduled Castes and Scheduled Tribes candidates is either equal to or less than the number of vacancies, the available candidates shall be considered as suitable candidates if they possess the minimum qualification required for those posts or services.

Provided that the qualifying marks in all the recruitment examinations for the Scheduled Castes and the Scheduled Tribes candidates in the aggregate may be relaxed by ten per cent by the Central Government or the Union Public Service Commission:

Provided further that in case adequate number of the Scheduled Castes or the Scheduled Tribes candidates do not qualify a prescribed test, such of the candidates who have appeared in the test and who fulfil the prescribed educational qualifications, but have failed in the prescribed tests shall be arranged in the order of their merit and recruited on probation against such or remaining vacancies subject to the passing of the prescribed in-service training course and the test within the period of probation.

(4) If the required number of Scheduled Castes and Scheduled Tribes candidates are not available for filling the reserved vacancies, a fresh examination shall be held exclusively for the candidates belonging to the Scheduled Castes or the Scheduled Tribes, as the case may be, for filling the remaining reserved vacancies.

(5) If after holding the special examination, the required number of candidates belonging to Scheduled Castes or the Scheduled Tribes are still not available or, if the number of such candidates is less than the number of reserved vacancies, the vacancies which remain unfilled shall be temporarily filled by general candidates in accordance with the procedure laid down in section 6 and 7.

Promo-
tion on
the
basis of
seniority.

11. (1) Where promotion is to be made on the basis of seniority subject to fitness, the senior-most Scheduled Castes and Scheduled Tribes officials shall be promoted to the next higher post or grade against reserved vacancies provided they possess the minimum qualifications and experience required for such promotion as per relaxed standard

(2) The number of reserved vacancies for promotion shall be determined on the basis of the reserved points shown in the roster maintained under section 5.

Promo-
tion on
selection.

12. Where promotion is to be made on the basis of selection, the procedure for filling the reserved vacancies shall be such, as may be prescribed, and the number of reserved vacancies shall be determined on

the basis of the reserved points shown in the roster maintained under section 5. The zone of consideration shall be six times the number of vacancies.

13. Where selection is to be made from different services, the recruiting or appointing authority shall select Scheduled Castes and Scheduled Tribes candidates to the extent or the reserved quota provided such candidates satisfy the minimum conditions of qualifications and experience laid down in respect of the posts concerned.

Selection from different services.

14. In case of posts filled by direct recruitment reservation shall be made for the Scheduled Castes and the Scheduled Tribes candidates at the time of confirmation in the prescribed ratio.

Reservation in confirmation.

15. (1) Every appointing authority shall furnish to the Central Government in the prescribed manner, an annual report on the appointments made upto the end of the month of July of the succeeding financial year and shall maintain such other records as may be prescribed.

Annual report of appointments.

(2) Any officer authorities by the Central Government in that behalf may inspect any record or documents and require the appointing authority to produce the roster and other records maintained in his office relating to appointments made by him.

(3) It shall be the duty of the appointing authority to produce such records and documents, furnish such information and afford all such assistance and facilities, as may be necessary, for the aforesaid purpose.

16. In each establishment, an officer of senior rank authorised in that behalf shall act as liaison officer in respect of the matters provided in this Act and shall be specially responsible for—

Responsibility of Heads of Department.

- (a) ensuring proper implementation of the provisions of this Act and the rules made thereunder;
- (b) ensuring compliance by the subordinate authorities;
- (c) ensuring timely submission of reports;
- (b) ensuring compliance by the subordinate authorities;
- (e) ensuring necessary assistance to the Commission for Scheduled Castes and Scheduled Tribes, Parliamentary Committee on the Welfare of Scheduled Castes and Scheduled Tribes or any other Agency or statutory body appointed by the Government to investigate into the complaints received from the organisations or individuals belonging to the Scheduled Castes and Scheduled Tribes.

17. (1) There shall be a Standing Committee consisting of the following members, namely:—

Standing Committee.

- (a) Prime Minister--Chairman;
- (b) Minister of Home Affairs;
- (c) There Members of Parliament belonging to the Scheduled Castes/Tribes to be nominated by the Central Government;
- (d) Minister-in-charge for the Welfare of Scheduled Castes/Tribes; and

(e) Cabinet Secretary--Secretary.

Functions
of the
Standing
Commit-
tee.

18. The Standing Committee appointed under Section 17 shall perform the following functions, namely:—

- (a) to review the implementation of the provisions of this Act and the rules made thereunder twice in a financial year;
- (b) to suggest measures for the removal of difficulties in such implementation or for improvement therein; and
- (c) to perform such other functions as the Central Government may, from time to time, assign to the Committee.

Annual
report to
be laid
before
Parlia-
ment.

19. The Central Government shall prepare an annual report on the working of this Act and lay it before each House of Parliament for a period of not less than fifteen days in the Budget Session of the succeeding financial year.

Penalty.

20. If an appointing authority makes an appointment in contravention of the provisions of this Act, he shall be punishable with fine which may extend to rupees five hundred or simple imprisonment for fifteen days or both.

Provided that special provisions shall be prescribed by appropriate authority when the appointing authority is other than Government, Public Corporation, Autonomous Body, etc.

Cogni-
zance.

21. No prosecution for an offence under this Act shall be instituted except with the sanction of the Central Government.

Removal
of diffi-
culties.

22. If any difficulty arises in giving effect to the provisions of this Act, the Central Government may take such steps or issue such orders, not inconsistent with the provisions of this Act, as it considers necessary for removing such difficulty.

Inspec-
tion of
records.

23. Notwithstanding anything contained in the Central Services (Conduct) Rules, any member of any Scheduled Castes and Scheduled Tribes who is adversely affected on account of non-compliance with the provisions of this Act or the rules made thereunder by any appointing authority, may bring the fact to the notice of the Central Government or the Commission for Scheduled Castes and Scheduled Tribes, and upon an application made by him the Central Government or the Commission for Scheduled Castes and Scheduled Tribes may call for such records or take such action thereon as it may think fit.

Power to
make
rules.

24. (1) The Central Government may make rules for carrying out all or any of the purposes of this Act.

(2) In particular and without prejudice to the generality of the foregoing powers the Central Government may make rules in respect of all matters expressly provided under this Act.

(3) Every rule made under this Act shall be laid, as soon as may be after it is made, before each House of Parliament, while it is in session, for a total period of thirty days which may be comprised in one session

or in two or more successive session, and if, before the expiry of the session immediately following the session or the successive session aforesaid agree that the rule should not be made the rule shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule.

25. The provisions of this Act shall have effect notwithstanding anything to the contrary contained in any other law or rule, order or resolution made by the Central Government.

Over
riding
effect of
the Act.

STATEMENT OF OBJECTS AND REASONS

The provisions of reservation in posts and services having not been codified, there has been an apathy and unwillingness on the part of most of the officers in the matter of implementation thereof. As a result of this in none of the Ministries/Departments, Public Undertakings, etc., the quota of Scheduled Castes and Scheduled Tribes is fully evinced after 42 years of independence and 38 years of adoption of the Constitution.

The penalty clause in the Bill will serve as a deterrent to the wilful defaulters in implementing the provisions contained in Article 335 of the Constitution.

The Bill is intended to ensure implementation of the provisions contained in the Constitution.

SATYA PRAKASH MALAVIYA.

FINANCIAL MEMORANDUM

Clause 8(1) of the Bill provides for special arrangement for imparting Technical Training. Through the exact number of such training centres cannot be assessed at this stage, yet it is estimated that a recurring expenditure of Rs. 10,00,000 is likely to be involved.

No non-recurring expenditure is likely to be involved.

MEMORANDUM REGARDING DELEGATED LEGISLATION

Clause 24 of the Bill empowers the Central Government to make rules to carry out all or any of the purposes of this Act.

These powers are within the ambit of the delegated legislation.

V

BILL No. XIV of 1990

A Bill further to amend the Constitution of India.

BE it enacted by Parliament in the Forty-first Year of the Republic of India as follows:—

Short title and commencement.

1. (1) This Act may be called the Constitution (Amendment) Act, 1990.

(2) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint.

Amend-
ment of
article
311.

2. In article 311 of the Constitution,—

(i) in clause (2) the second proviso shall be omitted; and

(ii) clause (3) shall be omitted.

STATEMENT OF OBJECTS AND REASONS

Citizens of the country, particularly the Central and the State Government employees and their family members, are perturbed over a recent judgement of the Supreme Court in which it has been held that a Government employee, in certain circumstances, can be dismissed summarily without an inquiry in which he has been informed of the charges against him and without giving him a reasonable opportunity of being heard in respect of those charges.

In accordance with the principles of natural justice and equity, however, it is obligatory that no punishment should be awarded to anybody *ex parte*. This obligation is the hallmark of natural justice and as such it is beyond one's comprehension that Government employees should be treated otherwise. Right of self-defence is a must in any democracy.

In view of the relevant constitutional provisions as they stand after this decision of the Supreme Court, it has become necessary that steps be taken to safeguard the interests and security of service of the employees so as to save them from the fear of victimisation and sense of insecurity.

That it is to prevent such an eventuality that this amendment is being moved.

The Bill seeks to achieve the aforesaid object.

SATYA PRAKASH MALAVIYA.

VI

BILL No. XIX OF 1990

A Bill further to amend the Constitution of India.

BE it enacted by Parliament in the Forty-first Year of the Republic of India as follows:—

Short title.

1. This Act may be called the Constitution (Amendment) Act, 1990.

Substitution of new article 121.

2. For article 121 of the Constitution, the following article shall be substituted, namely:—

Restriction on discussion in Parliament.

“121. No discussion shall take place in Parliament with respect to the conduct of any Judge of the Supreme Court or of a High Court or Comptroller and Auditor-General of India in the discharge of his duties except upon a motion for presenting an address to the President praying for the removal of the Judge or Comptroller and Auditor-General of India as hereinafter provided.”.

STATEMENT OF OBJECTS AND REASONS

Recently there has been personal and unwarranted criticism of the office of the Comptroller and Auditor-General of India in the Parliament and, therefore, a demand has followed that Constitutional immunity against personal attacks on this office should be provided on the lines of the privileges enjoyed by the courts and the legislatures.

There was a near unanimity in the Constituent Assembly that the CAG "is the most important functionary under the Constitution in his position as the watchdog of the country's finances; and that in a democracy, while it was for the legislature to sanction and for the executive to spend monies, the Comptroller and Auditor-General had to scrutinise that the monies sanctioned by the legislature were properly spent by the executive."

Dr. B. R. Ambedkar participating in the debate in Constituent Assembly emphasising the immunity of this sensitive office from interference by the executive said "personally, speaking for myself, I am of opinion that this holder of office is probably the most important officer under the Constitution of India. He is the one man who is going to see that the expenditure voted by Parliament is not exceeded or varied from what has been laid down by Parliament in what is called the APPROPRIATION ACT. If this functionary is to carry out the duties and his duties, I submit, are far more important than the duties even of the judiciary, he should have been certainly as independent as judiciary. But, comparing the Articles about the Supreme Court and the Articles relating to the Auditor-General, I cannot help saying that we have not given him the same independence which we have given to the judiciary, although I personally feel that he ought to have far greater independence than the judiciary itself."

In 1954, Dr. S. Radhakrishnan describing the importance of CAG remarked "Ours is a poor country, its resources are limited and we cannot afford to risk any kind of waste and, therefore, the Audit Department will have to look upon their functions as functions of the greatest public utility by pointing out errors and by showing where and how we can remove abuses, effect economy, increase efficiency and reduce waste of expenditure".

There is a similarity in the constitutional provisions relating to the mode of appointment and procedure for removal for the Supreme Court Judges and the CAG. The oath prescribed by the Constitution for the CAG is the same as that of a Judge of the Supreme Court. The Comptroller and Auditor-General's (Duties, Powers and Condition of Service) Act, 1971 provides that "There shall be paid to the CAG a salary which is equal to the salary of the Judge of the Supreme Court and that he shall be entitled to a pension which is equal to the pension payable to a Judge of the Supreme Court."

Both a Judge of the Supreme Court and the CAG are required to vacate their offices on attaining the age of sixty-five years.

CAG is expected to do his job and discharge his Constitutional duties and obligations without fear or favour, affection or illwill. This is high time to protect the CAG from personal and unwarranted attacks and also to take adequate steps to safeguard the autonomy and independence of the institution and also to provide him constitutional immunity.

Hence this Bill.

SATYA PRAKASH MALAVIYA

VII

BILL No. XLI of 1990

A Bill to provide for the establishment of the State of Pondicherry and for matters connected therewith.

Be it enacted by Parliament in the Forty-first Year of the Republic of India as follows:—

PART I

PRELIMINARY

1. This Act may be called the State of Pondicherry Act, 1990.	Short title.
2. In this Act, unless the context otherwise requires—	Definitions.
(a) "Administrator" means the Administrator appointed by the President under article 239 of the Constitution;	
(b) "appointed day" means the day which the Central Government may, by notification in the Official Gazette, appoint;	
(c) "article" means an article of the Constitution;	
(d) "Election Commission" means the Election Commission appointed by the President under article 324;	

(e) "existing Union territory of Pondicherry" means the Union Territory of Pondicherry as existing immediately before the appointed day;

(f) "law" includes any enactment, ordinance, regulation, order, bye-law, rule, scheme, notification or other instrument having immediately before the appointed day, the force of law in the whole or any part of the existing Union territory of Pondicherry;

(g) "sitting member", in relation to the House of the People means a person who, immediately before the appointed day, representing as a member of the House;

(h) "treasury" includes a sub-treasury.

PART II

ESTABLISHMENT OF THE STATE OF PONDICHERRY

Establishment of State of Pondicherry.

3. On and from the appointed day, there shall be established a new State, to be known as the State of Pondicherry comprising the territories which immediately before that day were comprised in the existing Union territory of Pondicherry.

Amendment of First Schedule to the Constitution.

4. On and from the appointed day in the First Schedule to the Constitution,—

(a) under the heading "I. THE STATES" after entry 25, the following entry shall be inserted, namely:—

"26 Pondicherry...The territories specified in section 3 of the State of Pondicherry Act, 1990";

(b) under the heading "II. UNION TERRITORIES", entry 6 relating to Pondicherry shall be omitted and entry 7 shall be re-numbered as entry 6.

PART III

REPRESENTATION IN THE LEGISLATURES THE COUNCIL OF STATES

Representation in Council of States.

5. As from the appointed day there shall be allotted one seat to the State of Pondicherry in the Council of States.

Provision as to sitting member.

6. The sitting member of the Council of States representing the Union Territory of Pondicherry, shall be deemed to have been elected to the Council by the State of Pondicherry.

THE HOUSE OF THE PEOPLE

7. On and from the appointed day,—

(a) in the First Schedule to the Representation of the People Act, 1950,—

(i) under the heading "I. STATES".—

(a) entries 16 to 22 shall be re-numbered as entries 17 to 23 respectively;

(b) after entry 15, the following entry shall be inserted, namely:—

16. Pondicherry....1...."

(ii) under the heading "II. UNION TERRITORIES", entry 9 relating to Pondicherry shall be omitted.

(b) the parliamentary constituency of the existing Union territory of Pondicherry shall be deemed to be the Parliamentary constituency of the State of Pondicherry and the Delimitation of Parliamentary and Assembly Constituencies Order, 1966, shall be construed accordingly.

8. The sitting member of the House of the People representing the constituency which, on the appointed day, by virtue of the provisions of section 7, becomes a constituency of the State of Pondicherry shall be deemed to have been elected under sub-clause (a) of clause (1) of article 81 of the House of the People by that constituency.

Provision
as to
Sitting
member.

THE LEGISLATIVE ASSEMBLY

9. The total number of seats in the Legislative Assembly of the State of Pondicherry to be constituted at any time after the appointed day, to be filled by persons chosen by direct election from territorial constituencies shall be forty.

Allocation
of
seats
in the
Legisla-
tive As-
sembly.

10. (1) In the Second Schedule to the Representation of the People Act, 1950—

(i) under the heading "1 STATES",—

(a) entries 16 to 22 shall be renumbered as entries 17 to 23 respectively;

(b) after entry 15, the following entry shall be inserted, namely:—

16. Pondicherry....40...."

(ii) under the heading "II UNION TERRITORIES", entry 4 relating to Pondicherry shall be omitted.

Amend-
ment of
Second
Schedule
to Act 43
of 1950.

(2) The amendments made by clauses (a) and (b) of sub-para (i) shall have effect in relation to the Legislative Assembly of the State of Pondicherry to be constituted at any time after the appointed day.

11. The Election Commission shall distribute, whether before or after the appointed day, the seats assigned to the Legislative Assembly of the State of Pondicherry under Section 9 to single member territorial constituencies and delimit them on the basis of the latest census figures having regard to the provisions of the Constitution and to the following provisions:—

Defini-
tion of
Consti-
tuencies.

(a) all constituencies shall, so far as practicable, be geographically compact areas and in delimiting them regard shall be had to physical features, existing boundaries of administrative units, facilities of communication and public convenience; and

(b) every assembly constituency shall be so delimited as to fall only within the parliamentary constituency.

Rules of
Pro-
cedure.

12. The Rules of Procedure and Conduct of Business of the Legislative Assembly of the existing Union territory of Pondicherry as in force immediately before the appointed day shall, until rules are made under clause (1) of article 208, be the rules of procedure and conduct of business of the Legislative Assembly of the State of Pondicherry subject to such modifications and adaptations as may be made therein by the Governor of that State.

PART IV

AUTHORISATION OF EXPENDITURE AND DISTRIBUTION OF REVENUES

Authori-
sation
of ex-
penditure
pending
its sanc-
tion by
Legisla-
tive As-
sembly.

13. (1) The President may, at any time before the appointed day, authorise by order such expenditure from the Consolidated Fund of State of Pondicherry as he deems necessary for a period of not more than six months beginning with the appointed day, pending the sanction of such expenditure by the Legislative Assembly of the State of Pondicherry.

Provided that the Governor of Pondicherry may, after the appointed day, authorise by order such further expenditure as he deems necessary from the Consolidated Fund of the State of Pondicherry for any period not extending beyond the said period of six months.

(2) The President or, as the case may be, the Governor of Pondicherry shall make separate orders under sub-section (1) in respect of periods falling in different financial years.

Reports
relating
to the
account
of the
existing
Union
territory
of Pundi-
cherry.

14. (1) The reports of the Comptroller and Auditor General of India referred to in section 49 of the Government of Union Territories Act, 1963 relating to the accounts of the existing Union territory of Pondicherry in respect of any period prior to the appointed day, shall be submitted to the Governor of Pondicherry who shall cause them to be laid before the Legislative Assembly of the State.

20 of 1963.

(2) The Governor may, by order,—

(a) declare any expenditure incurred out of the Consolidated Fund of the existing Union territory of Pondicherry on any service in respect of any period prior to the appointed day during any financial year in excess of the amount granted for that service and for that year as disclosed in the reports referred to in sub-section (1) to have been duly authorised, and

(b) provide for any action to be taken on any matter arising out of the said reports.

Allow-
ances and
privi-
leges of
Governor
of Pundi-
cherry.

15. The allowances and privileges of the Governor of Pondicherry shall, until provision in that behalf is made by Parliament by law under clause (3) of article 158, be such as the President may by order, determine.

16. The President, shall by order, determine the grants-in-aid of the revenue of the State of Pondicherry and the share of the State in the Union duties of excise, and taxes on income and for that purpose amend thereby the relevant provision of the Union Duties of Excise (Distribution) Act, 1962 the Additional Duties of Excise (Goods of Special Importance) Act, 1957, and the Constitution (Distribution of Revenue Order, 1969, in such manner as he thinks fit.

3 of 1962.
58 of 1957.

Distribu-
tion of
revenues.

PART V

ASSETS AND LIABILITIES

17. (1) All such property and assets with in the existing Union territory of Pondicherry as are held immediately before the appointed day by the Union for purposes of Governance of that Union territory shall, on and from that day, pass to the State of Pondicherry unless the purposes for which such property and assets are so held are for Union purposes:

Provided that the cash balance in the treasuries in the Union territory of Pondicherry before the appointed day shall, as from that day, vest in the State of Pondicherry.

(2) All rights, liabilities and obligations (other than those relatable to, or in connection with, a Union purpose), which are immediately before the appointed day,—

(a) the rights, liabilities and obligations of the Central Government arising out of, or in connection with, the governance of the Union territory of Pondicherry; or

(b) the rights, liabilities and obligations of the Administrator of the existing Union territory of Pondicherry in his capacity as such, or of the Government of that Union territory,

shall, on and from the appointed day, be the rights, liabilities and obligations of the Government of the State of Pondicherry.

(3) The right to recover arrears of—

(a) any tax or duty being a tax or duty enumerated in the State List in the Seventh Schedule to the Constitution, or

(b) any duty referred to in article 268, or

(c) any tax under the Central Sales Tax Act, 1956, which have fallen due in the existing Union territory of Pondicherry shall pass to the State of Pondicherry.

(4) The provisions of this section shall not apply to or in relation to,—

(a) any institution, undertaking or project the expenditure in relation to which is immediately before the appointed day met from out of the Consolidated Fund of India;

(b) any property which has been placed by the Union at the disposal of the Administration of the existing Union territory of Pondicherry subject to the condition that the ownership thereof will continue to vest in the Union.

74 of 1956.

Property,
assets,
rights,
liabili-
ties,
obliga-
tions, etc.

Explanation.—For the purposes of this Section—

(a) "liability" includes liability in respect of any civil deposit, local fund deposit, charitable or other endowment, provident fund account, pension or actionable wrong;

(b) "Union purposes" means the purposes of Government relating to any of the matters mentioned in the Union List.

PART VI**PROVISIONS AS TO SERVICE**

Provi-
sion re-
lating to
All India
Services.

18. (1) In this Section, the expression "State Cadre",—

(a) in relation to the Indian Administrative Service has the meaning assigned to it in the Indian Administrative Service (Cadre) Rules, 1954;

(b) in relation to the Indian Police Service has the meaning assigned to it in the Indian Police Service (Cadre) Rules, 1954;

(c) in relation to the Indian Forest Service, has the meaning assigned to it in the Indian Forest Service (Cadre) Rules, 1966.

(2) On and from the appointed day, there shall be constituted for the State of Pondicherry a State Cadre of the Indian Administrative Service, a State Cadre of the Indian Police Service and a State Cadre of the Indian Forest Service.

(3) The initial strength and composition of each of the said State cadres shall be such as the Central Government may, by order, determine before the appointed day.

(4) Such of the members of each of the said Services borne on the Union territories cadre thereof immediately before the appointed day, as the Central Government may by order, specify, shall be allocated to the State cadre of Pondicherry of the same Service with effect from such date or dates as may be specified in the order.

(5) Nothing in this Section shall be deemed to affect the operation after the appointed day of the All-India Services Act, 1951, or the rules or regulations made thereunder in relation to the State cadre of the said services referred to in sub-section (2) or sub-section (4) and in relation to the members of those services borne on the State cadre.

Provi-
sions re-
lating to
certain
services.

19. (1) On and from the appointed day, there shall be constituted for the State of Pondicherry the following services, namely:—

(a) The Pondicherry Administrative Service; and

(b) the Pondicherry Police Service; and

(2) The initial strength and composition of the cadres of the said Services shall be such as the Administrator of the existing Union territory of Pondicherry may, with the approval of the Central Government, by order, determine before the appointed day.

(3) Subject to the foregoing provision of this section, the rules and regulations applicable to or in relation to the members of the existing Civil Service and the existing Police Service as in force immediately before the appointed day shall, so far as may be, apply respectively to and in relation to the members of the Pondicherry Administrative Service and the Pondicherry Police Service until altered repealed, or amended by the competent authority.

(4) Every member of the Central Health Service who immediately before the appointed day is holding any post in the existing Union territory of Pondicherry being a post included in the authorised strength of that service, shall, until otherwise directed by the Central Government, be deemed to be on deputation, on and from the appointed day, to the Government to the State of Pondicherry on the same terms and conditions of service as are applicable to him under the Central Health Service Rules, 1963, but without any deputation allowance:

Provided that the period of such deputation shall in no case extend beyond a period of three years from the appointed day.

Explanation.—In this sub-section, “Central Health Service” means the Central Health Service constituted under the Central Health Service Rules, 1963.

20. (1) Every person who immediately before the appointed day is serving in connection with the affairs of the Union under the administrative control of the Administrator of the Union territory of Pondicherry shall, unless otherwise directed by an order of the Central Government, be deemed to have been allocated for service as from that day in connection with the affairs of the State of Pondicherry.

Provi-
sions re-
lating to
other
Services.

Provided that no direction shall be issued under this section after the expiry of a period of one year from the appointed day.

(2) The provisions of this section shall not apply in relation to persons to whom the provisions of sections 18 and 19 apply

21. (1) Nothing in this section or sections 19 and 20 shall be deemed to affect on or after the appointed day the operation of the provisions of Chapter I or part XIV of the Constitution in relation to determination of the conditions of service of persons serving in connection with the affairs of the State of Pondicherry.

Other
Provi-
sions as
to ser-
vices.

Provided that the conditions of service applicable immediately before the appointed day in the case of any person referred to in section 19 of section 20 shall not be varied to his disadvantage except with the previous approval of the Central Government.

(2) All services prior to the appointed day rendered by a person allocation under section 19 or deemed to have been allocated under section 20 in connection with the administration of the Union territory of Pondicherry, shall be deemed to have been rendered in connection with the affairs of the State of Pondicherry for the purposes of the rules regulating his conditions of service.

Provisions as to Continuance of officers in same posts.

22. Every person who immediately before the appointed day is holding or discharging the duties of any post or office in connection with the administration of the Union territory of Pondicherry, shall continue to hold the same post or office in the State of Pondicherry and shall be deemed, on and from that day, to have been duly appointed to that post or office by the Government of, or other appropriate authority, in the State of Pondicherry.

Provided that nothing in this section shall be deemed to prevent a competent authority on or after the appointed day from passing in relation to such person any other order affecting his continuance in such post or office.

Advisory Committees.

23. The Central Government may, by order, establish one or more Advisory Committees for the purpose of assisting it in regard to—

(a) the discharge of its functions under this part; and

(b) the ensuring of fair and equitable treatment to all persons affected by the provisions of this part and the proper consideration of any representations made by such persons.

Power of Central Government to give directions.

24. The Central Government may give such directions to the Government of the State of Pondicherry as may appear to it to be necessary for the purpose of giving effect to the foregoing provisions of this Part, and the State Government shall comply with such directions.

PART VII

LEGAL AND MISCELLANEOUS PROVISIONS

Amendment of Article 210, Article 239A, 239B, and article 240.

25. On and from the appointed day—

(a) in the proviso to clause (2) of article 210, for the words "States of Himachal Pradesh, Manipur, Meghalaya and Tripura" the words "State of Himachal Pradesh, Manipur, Meghalaya, Pondicherry and Tripura" shall be substituted.

(b) articles 239A and 239B of the Constitution shall be omitted.

(c) in clause (1) of article 240, the word "Pondicherry" shall be omitted.

Amendment of Act 20 of 1963.

26. On and from the appointed day, in the Government of Union Territories Act, 1963, clause (h) of sub-section (1) of section 2, shall be omitted.

Continuance of existing laws and their adaptation.

27. (1) All laws in force, immediately before the appointed day, in the existing Union territory of Pondicherry shall continue to be in force in the State of Pondicherry until altered, repealed or amended by a competent Legislature or other competent authority.

(2) For the purpose of facilitation the application in relation to the State of Pondicherry of any law made before the appointed day the appropriate Government may, within two years from that day, by order make such adaptations and modifications of the law, whether by way of repeal or amendment, as may be necessary or expedient, and thereupon

every such law shall have effect subject to the adaptations and modifications so made until altered, repealed or amended by a competent Legislature or other competent authority.

Explanation.—In this section, the expression “appropriate Government” means, as respects any law relating to a matter enumerated in the Union List in the Seventh Schedule to the Constitution, the Central Government and as respects any other law, the Government of the State of Pondicherry.

28. Notwithstanding that no provision or insufficient provision has been made under section 27 for the adaptation of a law made before the appointed day, any court, tribunal or authority required or empowered to enforce such law may, for the purpose of facilitating its application in relation to the State of Pondicherry, construe the law in such manner not affecting the substance as may be necessary or proper in regard to the matter before the court, tribunal or authority, as the case may be.

Power to construe laws.

29. All courts and tribunals and all authorities discharging lawful functions throughout the existing union territory of Pondicherry or any part thereof immediately before the appointed day shall, unless their continuance is inconsistent with the provisions of this Act or until other provision is made by a competent Legislature or other competent authority, continue to exercise their respective functions.

Provisions as to continuance at courts, etc.

30. The provisions of this Act shall have effect notwithstanding anything inconsistent therein contained in any other law.

Effect of provisions of Act inconsistent with other laws.

31. (1) If any difficulty arises in giving effect to the provisions of this Act, the President may, by order do anything not inconsistent with such provisions which appears to him to be necessary or expedient for the purpose of removing the difficulty.

Power to remove difficulties.

(2) Every order made under this section shall be laid before each House of Parliament.

32. (1) The Central Government may, by notification in the Official Gazette, make rules to give effect to the provisions of this Act.

Power to make rules.

(2) Every rule made under this section shall be laid as soon as may be after it is made before each House of Parliament while it is in Session for a total period of thirty days which may be comprised in one Session or in two successive Sessions, and if, before the expiry of the Session in which it is so laid or the Session immediately following, both Houses agree in making any modification in the rule or both Houses agree that the rule should not be made, the rule shall thereafter have effect only in such modified form or be of no effect, as the case may be so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule.

STATEMENT OF OBJECTS AND REASONS

The aspirations of the people of Pondicherry has all along been to attain full Statehood within the Union. Most of the Union territories have been granted Statehood. In Pondicherry even for postings and transfers in the Government organisations, the Pondicherry administration has to wait for the orders of the Central Government. The Union Territory of Pondicherry comprises of Pondicherry, Karikal, Mahe and Yanam. In these territories the Welfare measures and administrative set-ups have to be efficiently organised.

It is in the fitness of things, therefore, that the wishes of the people of Pondicherry for Statehood are also fulfilled.

The Bill seeks to achieve the above object.

V. NARAYANASAMY.

FINANCIAL MEMORANDUM

Clause 11 of the Bill seeks to empower the Election Commission to delimit the Assembly Constituencies of the new State of Pondicherry. For this purpose a non-recurring expenditure of about rupees ten thousand will have to be incurred from the Consolidated Fund of India.

2. As a State, Pondicherry will be entitled to a share in the Central taxes which will be determined in pursuance of clause 16 of the Bill. This would augment the States revenue, but a gap between the revenue receipts and expenditure on revenue account may still be left. In the past, the Finance Commission had taken note of such deficits and recommended suitable grants-in-aid under article 275(1) of the Constitution for various States. It is, therefore, proposed to provide for such quantum of grants-in-aid to the new State as may be considered necessary until the recommendations of the next Finance Commission become available, by suitably amending the provisions of Constitution (Distribution of Revenues) Order, 1969, in exercise of the powers sought to be taken under clause 16 of the Bill.

3. Clause 23 of the Bill seeks to empower the Central Government to establish one or more Advisory Committees for the purpose of assisting it in regard to the discharge of its functions in relation to allocation of the members of services and the ensuring of fair and equitable treatment to all persons affected. An expenditure of about rupees five thousand may have to be incurred from the Consolidated Fund of India on account of travelling allowance of Members of these Committees.

MEMORANDUM REGARDING DELEGATED LEGISLATION

Clause 15 of the Bill enables the President to determine by order the allowances and privileges of the Governor of the new State.

Clause 16 of the Bill empowers the President to determine by order the grants-in-aid to the new State and its share of Central Taxes and amend for that purpose the relevant provisions of the Union Duties of Excise (Distribution) Act, 1957, and the Constitution (Distribution of Revenues) Order, 1969.

Clause 27 of the Bill provides for the adaptation of existing law to facilitate their application to the new State. The power to adapt is being conferred on the Central Government in the case of laws relating to matters enumerated in the Union List in the Seventh Schedule to the Constitution and on the Government of the new State in the case of all other laws.

Clause 32 of the Bill empowers the Central Government to make rules to give effect to the provisions of the Bill when enacted. The rules if any, will be confined to matters of procedure and other matters of minor detail relating to the enforcement of the various provisions included in the Bill.

The aforementioned provisions are mainly of a consequential nature or pertain to matters of details and procedure. As such, the proposed delegation of legislative powers is of a normal character.

VIII

BILL No. XXXVIII OF 1990

A Bill further to amend the Foreign Exchange Regulation Act, 1973

Be it enacted by Parliament in the Forty-first Year of the Republic of India as follows:—

1. (1) This Act may be called the Foreign Exchange Regulation (Amendment) Act, 1990.

Short title and commencement.

(2) It shall come into force with immediate effect.

2. In section 28 of the Foreign Exchange Regulation Act, 1973,—

Amendment of section 28 of Act 46 of 1973.

(i) in the marginal heading, after the words "management advisers" the words "and on use of trade mark or name" shall be inserted.

(ii) in Sub-section (1), for para (c) the following para shall be substituted, namely:—

"(c) permit any trade mark or name which he or it is entitled to use, to be used either in whole or with partial modification by any person or company for any direct or indirect consideration, or otherwise."

(iii) In the Explanation after item (d) the following item shall be added namely:—

(e) "trade mark or name" includes corporate name, business name or name of any product which any such person or company (including its branch) as is referred to in sub-section (3) is using or is entitled to use to render such product marketable to his or its consumer, as the case may be."

STATEMENT OF OBJECTS AND REASONS

The object of the Bill is to give proper meaning and effect to section 28 of the Foreign Exchange Regulation Act, 1973, as regards the use of a foreign trade mark or name.

It has come to notice that in respect of goods offered for sale in our domestic market, rampant use of foreign trade mark or name is being made without seeking permission under the said Act on the plea that "no consideration" has been paid to the foreign company. Any person or company would not allow its valuable property (trade mark or name) to be used for no consideration especially because prior to the enactment of the said Act, for the very same right large amounts were being paid.

Multinational companies operating in consumer goods industry are able to exploit the advantages of their well known foreign brand names to the detriment of local industry. The Bill is intended to discourage the use of foreign trade mark for the growth of indigenous industry and encourage the establishment of Indian brand names both for domestic as well as export markets.

The Bill will not affect the export commitment of any person or company because of the general permission already accorded by the Reserve Bank of India in terms of the said section. The Reserve Bank of India has also given a general permission for pharmaceuticals and pesticides for use of foreign brand names. This Bill will be consistent with the Government policy of restricting multinational in consumer goods.

Hence this Bill.

KAMAL MORARKA

IX

BILL No. XL of 1990

A Bill further to amend the Constitution of India.

Be it enacted by Parliament in the Forty-first Year of the Republic of India as follows:—

1. (1) This Act may be called the Constitution (Amendment) Act, 1990.

(2) It shall come into force with immediate effect.

2. In the Eighth Schedule to the Constitution,—

(a) existing entries Nos. 3 to 6 shall be re-numbered as entries Nos. 4 to 7 respectively;

(b) before entry No. 4 as so re-numbered, the entry "3. Bhojpuri" shall be inserted;

(c) after entry No. 7 as so re-numbered the entry "8. Maithili" shall be inserted; and

(d) existing entries Nos. 7 to 15 shall be re-numbered as entries Nos. 9 to 17 respectively.

Short title and commencement

Amendment to Eighth Schedule.

STATEMENT OF OBJECTS AND REASONS

In our country, more than 800 million people live. They have different ways of life, culture, customs, religions, living habits and they speak different languages and dialects. However, only fifteen languages have been recognised and incorporated in the Eighth Schedule to the Constitution. As such, many other languages do not find a place in the Constitution. Bhojpuri and Maithili are two such languages which should have been included in the Constitution and should have been brought into the mainstream of the nation.

Bhojpuri is the mother tongue of millions of people in Bihar and eastern Uttar Pradesh. It has a rich cultural heritage. In the recent times it has made much headway in the field of cinema also.

Similarly, Maithili language is the mother tongue of millions of people in Bihar. It is also the mother tongue of the people residing across the border in the adjacent areas of Nepal. Maithili is a language which has been recognised by the Sahitya Academy for the last many years and is being taught at graduate as well as at post-graduate levels in several colleges and universities. It is also a medium for competitive examinations conducted by the Government of Bihar.

It will, therefore, be just and fair to include Bhojpuri and Maithili languages in the Eighth Schedule to the Constitution of India so that the people of Bihar and eastern U.P. in particular, feel proud for the same and the people of other regions are attracted to these two ancient languages of India leading to its further development at national level.

Hence this Bill.

S. S. AHLUWALIA

X

BILL No. XLII of 1990

A Bill further to amend the Constitution of India.

Be it enacted by Parliament in the Forty-first Year of the Republic of India as follows:—

1. (1) This Act may be called the Constitution (Amendment) Act, 1990.

Short title and commencement.

(2) It shall come into force with immediate effect.

2. After article 16 of the Constitution the following article shall be inserted, namely:—

Insertion of new article 16A.

“16A. All adult citizens shall have the right to work, that is to say, the right to guaranteed employment and to receive payment for the work as per the nature, quantum and skill of the job performed, so as to ensure them adequate means of livelihood”.

3. In article 41 of the Constitution the words “to work” wherever they occur shall be omitted.

Amendment of article 41.

STATEMENT OF OBJECTS AND REASONS

In our country the problem of unemployment is increasing day by day. The number of registered unemployed persons in the employment exchange is almost three crores. Similarly there are millions of people who have not registered their names in the employment exchanges. The problem of unemployment has affected both the educated and illiterates equally. This is causing erosion of moral values and frustration among the youth of the country. Unemployment is one of the causes for the rise of terrorism in the country.

Though the right to work finds a mention in the Directive Principles of State Policy in article 41 of the Constitution of India, it remains outside the purview of courts of law. If the right to work is included as a fundamental right, the person can seek remedy in a Court of Law and Government will have to provide him a job.

In his address to the members of both the Houses of Parliament assembled together on the 12th March, 1990, the President had assured that Government would bring forward a legislation providing for the right to employment. The present Government had also assured the electorate during the recent general elections above the right to employment and had included it in its manifesto. The Government has so far failed to bring forward a legislation providing for right to work. Once the right to work is made a fundamental right, it will give a new direction and responsibility to Government to take all necessary measures to guaranteed employment to all citizens.

Hence this Bill.

S. S. AHLUWALIA

FINANCIAL MEMORANDUM

Clause 2 of the Bill provides for the right to work to all the citizens of the country above the age of eighteen years. Accordingly the Central Government and State Governments shall have to take steps to provide employment to such citizens who remain unemployed. The Bill, therefore, if enacted, will involve expenditure from the Consolidated Fund of India in respect of Central and Union Territories Schemes and for providing of financial assistance to State Governments. It is, therefore, anticipated that an annual recurring expenditure of about rupees one thousand crores is likely to be incurred from the Consolidated Fund of India.

A non-recurring expenditure of about rupees one hundred crores is also likely to be involved to meet other initial expenses.

XI

Bill No. XLIII of 1990

A Bill further to amend the Constitution of India.

Be it enacted by Parliament in the Forty-first Year of the Republic of India as follows:—

Short title and commencement.

1. (1) This Act may be called the Constitution (Amendment) Act, 1990.

(2) It shall come into force with immediate effect.

Amendment of article 338.

2. In article 338 of the Constitution, clause (10) shall be omitted.

Substitution of new article for article 340.

3. For article 340 of the Constitution the following article shall be substituted, namely:—

"340(1) The President shall, within six months from the commencement of the Constitution (Amendment) Act, by order, constitute a National Commission for Backward Classes and Minority Communities which shall consist of a Chairman and five other members to be appointed by the President.

(2) The President may, by order, determine the qualifications which shall be requisite for appointment as members of the Commission and the manner in which they shall be selected.
to the President as to,—

(3) It shall be the duty of the Commission to make recommendations

- (a) the reservation of seats in Parliament and State Legislatures for the backward classes and minorities;
- (b) the reservation in the making of appointments to services and posts in connection with the affairs of the Union or of a State for backward classes and minorities;
- (c) the reservation of seats in the educational institutions for backward classes and minorities;
- (d) the process of socio economic development of the backward classes and minorities and to evaluate the progress of their development under the Union or any State; and
- (e) the measures that should be taken by the Union or any State for the effective implementation of such safeguards and other measures necessary for the protection, welfare and socio economic development of the backward classes and minorities.

(4) The Commission shall determine its own procedure and shall have such powers in the performance of its functions as the President may, by order, confer on it.

(5) The President shall cause every recommendation made by the National Commission for Backward Classes and Minority Communities to be laid before each House of Parliament alongwith a memorandum explaining the action taken or proposed to be taken within a specified period of time, on the recommendations relating to the Union and Union territories and the reasons for non acceptance, if any, of such recommendation.

Explanation: In this article the reference to minority communities shall be construed as a reference to the persons belonging to the Christian, Muslim, Sikh and Parsi communities.

4. Notwithstanding anything contained in the Constitution, the recommendations made by the Mandal Commission on backward classes and such other recommendations made by the Minorities Commissions on the Minorities from time to time, before the commencement of the Constitution (Amendment) Act, and pending before the President, shall be dealt with in accordance with the provisions of this article.

National Commission for Backward Classes and Minority communities.

STATEMENT OF OBJECTS AND REASONS

During the recent general elections the ruling National Front in its manifesto had promised that the Backward Classes and Minorities Commission will be given statutory status and in order to remove unemployment and economic backwardness among the minorities the Government would take *inter alia* steps like, setting up of Minorities Financial Corporations, representation for minorities on various recruitment committees and boards, encouragement in establishment of technical and polytechnic institutions by minorities and preservation of minority character of the educational institutions guaranteed under the Constitution. It further promised that the socially and educationally backward classes would be given special opportunities and substantial reservations in employment, education and public offices and the recommendations of the Mandal Commission will be implemented expeditiously. This commitment had raised very high hopes among the country's backward classes and minorities and they supported the present ruling parties overwhelmingly in the last general elections. However, their aspirations have started dwindling since the present government have not given any emphasis on fulfilling any of their election promises for the backward and minority communities. Recently while moving the Bill for the establishment of a National Commission for Scheduled Castes and Scheduled Tribes, the Government did not agree to widen the scope of the proposed Commission so as to include the Minorities and Backward classes in its ambit.

Though it is true that a Minorities' Commission is functioning under the Ministry of Welfare, it has no statutory status and is working like any other Government department without any independent Constitutional status. Similarly, in the past, the Commissions *viz.* Kalelkar Commission and Mandal Commission were appointed to investigate into conditions and difficulties of the backward classes and recommend the steps to improve their lot. The Commissions recommended various steps in this regard but the recommendations are still in the cold storage. Despite the repeated assurances, the recommendations of the Mandal Commission have also yet to be implemented.

Hence it is proposed that the Constitutional Status should be granted to the Backward Classes and Minorities Commission and its recommendations must be implemented by the Government of the day and if it is not possible for them to implement the recommendations they must give the reasons for the same. It is also proposed that special provisions be made in the Constitution for implementing the recommendation of the Mandal Commission and other Minorities Commissions.

Hence this Bill.

S. S. AHLUWALIA

FINANCIAL MEMORANDUM

Clause 3 of the Bill provides for the establishment of a National Commission for Backward Classes and Minority Communities. Since a Minorities Commission is already in existence it may be merged with the proposed National Commission with Constitutional Status and Obligation. In view of such a merger there may not be any increase in the expenditure. However, the new responsibilities of the said Commission will entail some additional expenditure from the Consolidated Fund of India. Since the additional expenditure will depend upon the functioning of the Commission it is not possible at this stage to estimate the said expenditure.

The provisions of the Bill do not involve any other expenditure of a recurring or non-recurring nature.

XII

BILL No. XLVII OF 1990

A Bill to provide for ban on pre-birth sex determination tests and for matters connected therewith.

Be it enacted by Parliament in the Forty-first Year of the Republic of India as follows:—

Short title and commencement.

1. (1) This Act may be called the Banning of Pre-birth Sex Determination Tests Act, 1990.

(2) It shall come into force with immediate effect.

Definition.

2. In this Act, unless the context otherwise requires, 'sex determination test' means scientifically gaining knowledge of the sex of the foetus by means of use of amniocentesis or by any other mode or technique used to determine the sex of the foetus of the pregnant woman.

Ban on pre-birth sex determination tests.

3. All types of pre-birth sex determination tests are hereby banned.

4. Notwithstanding any thing contained in any other law for the time being in force—

Penalty.

(a) any medical practitioner or any person who conducts the test to determine the sex of the foetus of a pregnant woman; or

(b) any expectant mother who undergoes such pre-birth sex determination test, shall be punishable with imprisonment for a term which may extend to five years or with fine which may extend to twenty five thousand rupees or with both.

5. The Central Government may, by notification in the Official Gazette, make rules for carrying out the purposes of this Act.

Power to make rules.

STATEMENT OF OBJECTS AND REASONS

Presently pre-birth sex determination test centres are being run throughout the country. For the last few years such centres have flourished and have earned a lot of money from the people. These tests are being increasingly used by the parents and the medical practitioners for pre-birth sex determination with the intention of aborting the female foetus. This inhuman practice is gaining momentum day by day and if this is allowed to continue, it would result in imbalance in male-female ratio in the country which will be disastrous. This is high time that a legislation is brought forward to ban such tests in the country and provide for deterrent punishment to stop this inhuman practice.

Hence this Bill.

BIJOYA CHAKRAVARTY

MEMORANDUM REGARDING DELEGATED LEGISLATION

Clause 5 of the Bill empowers the Central Government to make rules for carrying out the purposes of the Bill. These rules will relate to matters of detail only and as such the delegation of legislative power is of a normal character.

XIII

BILL No. XLV OF 1990

A Bill to provide for employment or for means and resources for self employment to all adult citizens of the country and for matters connected therewith.

Be it enacted by Parliament in the Forty-first Year of the Republic of India as follows:—

1. (1) This Act may be called the Employment Guarantee Act, 1990.

(2) It shall come into force with immediate effect.

Short title and commencement.

2. In this Act, unless the context otherwise requires, "State" means the Union Government and includes the Government of a State and all local or other authorities under the control of the Union Government or Government of a State.

Definition.

3. It shall be obligatory on the part of the State to provide employment to all adult citizens seeking employment.

Provision of employment to all adult citizens.

Em-
ployees
not to
involve
in any
other
activity.

4. (1) Every citizen who has secured a job shall not involve himself in any financial or gainful activity other than his employment.

(2) Any citizen who is provided with a job shall have to relinquish his ownership of or share in any immovable property, except those used by him for his residential purposes, within two years of joining the service if the income from the employment is rupees one thousand per month or more.

Periodi-
cal pro-
motions
to em-
ployees.

5. It shall be obligatory on the part of the State to ensure periodical promotions to all employees on the basis of tests and/or performance.

Applica-
tions
from
persons
already
em-
ployed.

6. No application for any other employment from a person who is already in service shall be entertained by or forwarded to any other authority without that person having resigned from previous service, whether it be a Government or public undertaking or private service.

Provi-
sion of
facilities
for self
employ-
ment.

7. The State shall provide cheap credit, subsidy and other facilities to all citizens, including retired persons, seeking self-employment.

Punish-
ment.

8. Whoever violates the provisions of section 4 shall be punished with imprisonment for a term which may extend to one year or with fine which may extend to rupees five thousand or with both.

Power to
make
rules.

9. The Central Government may, by notification in the official Gazette, make rules for carrying out the purposes of this Act.

STATEMENT OF OBJECTS AND REASONS

Unemployment among the educated and uneducated youth has become a major and explosive problem in our country. Any delay in the solution of this problem is to the detriment of our vital national interests and goals. Those who are unemployed seldom get a chance for a new job as most of the applicants for any new job are from amongst those who are already employed persons as they have the experience for which they are preferred in comparison to unemployed having no experience. An unemployed person can not have experience which is required for the jobs. As such the job is grabbed by those who are already in service. Similarly, shares in our partitions of joint agricultural holdings by the fast growing class of educated and other gainfully employed persons adversely affects the development of agricultural production. This class of absentee or benami owners has got little interest and time for agricultural production. It has interest only in ownership of the land for additional resources. Those who cultivate have no ownership right and those who have do not cultivate. This has to be done away with. Many employed persons involve themselves in activities, other than the jobs they are employed in, resulting in financial gains and thus depriving the unemployed persons a chance to seek livelihood. Some sort of punishment should be imposed on such individuals to ensure the principle of one person one job. Side by side, more promotional opportunity for the employed is necessary to enable them to concentrate on their jobs. Adequate means and resources through cheap credits at differential rates of interest and subsidies, etc., for gainful production through self-employment to those unemployed can go a long way in mitigating the problem of unemployment in the country. This will boost the economy of the nation also.

This can be done with active support and resources by the Central Government and the State Government with appropriate legislative cover.

The Bill seeks to achieve the above object.

BIJOYA CHAKRAVARTY

FINANCIAL MEMORANDUM

Clause 3 of the Bill provides that the State shall provide employment to all adult citizens. Clause 7 provides that the State shall provide subsidy and other facilities to all citizens, including retired citizens, seeking self-employment. The Bill, if enacted, would involve expenditure from the Consolidated Fund of India in implementing the provisions of the Bill. Moreover, the State Governments may have to be given financial assistance for implementing the provisions.

The number of unemployed persons is not known and as such an estimate of expenditure cannot be given at the stage. However, it is likely to involve an annual recurring expenditure of about rupees one thousand crores from the Consolidated Fund of India.

A non-recurring expenditure to the tune of rupees one hundred crores is also likely to be involved.

MEMORANDUM REGARDING DELEGATED LEGISLATION

Clause 9 of the Bill empowers the Central Government to frame rules for carrying out the purposes of the Bill. Since the rules will relate to matters of detail only, the delegation of legislative power is a normal character.

XIV

BILL No. XLIV OF 1990

A Bill further to amend the Constitution of India.

Be it enacted by Parliament in the Forty-first Year of the Republic of India as follows:—

1. (1) This Act may be called the Constitution (Amendment) Act, 1990.

Short title and commencement.

(2) It shall come into force with immediate effect.

2. After article 38 of the Constitution, the following article shall be inserted, namely:—

Insertion of new article 38A.

“38A. The State shall take steps to reserve twenty five per cent. of posts and appointments to an office under the Government of, or any local or other authority within, a State or Union territory, for people belonging to the economically weaker sections of society and shall ensure that the reserved posts are filled up only from amongst them.”

Reservation of posts for economically weaker sections of society.

Insertion
of new
article
45A.

Provision
of free
education
to econo-
mically
weaker
sections
of society.

Amend-
ment of
article
47.

3. After article 45 of the Constitution, the following article shall be inserted, namely:—

“45A. The State shall endeavour to provide free education from primary level onwards, which shall include higher, technical, vocational, liberary, professional education, and also for scholarships, free hostel facilities, books, etc. to people belonging to the economically weaker sections of society.”

4. In article 47 of the Constitution, after the words “the State shall endeavour” the words “to provide free medical facilities including all medicines, hospitalisation charges, etc. to people belonging to the economically weaker sections of society and” shall be inserted.

STATEMENT OF OBJECTS AND REASONS

In a Welfare State like ours it is the duty of the State to provide economic and social security to the people who belong to economically weaker sections of the society. Their condition is very miserable and inhuman. They live in the slums in urban areas and as landless labour in rural areas. Their plight and woes are too many. In order to ensure that the benefits of development and progress reach everyone in India, social and economic security is essential to the economically weaker sections of the society. It is, therefore, proposed that reservation must be given to them in services and seats in educational institutions for their upliftment.

Hence this Bill.

BIJOYA CHAKRAVARTY.

SUDARSHAN AGARWAL,
Secretary-General.

